



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/698,598

10/31/2003

Brent Pipal

MS1-1670US

1651

22801 7590 03/16/2009

LEE & HAYES, PLLC
601 W. RIVERSIDE AVENUE
SUITE 1400
SPOKANE, WA 99201

EXAMINER

HOMAYOUNMEHR, FARID

ART UNIT

PAPER NUMBER

2439

MAIL DATE

DELIVERY MODE

03/16/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/698,598	Applicant(s) PIPAL ET AL.	
	Examiner Farid Homayounmehr	Art Unit 2439	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10, 11, 13-18, 33, 35-38 and 40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10, 11, 13-18, 33, 35-38, and 40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is responsive to communications: application, filed 10/31/2003; amendment filed 12/22/2008.
2. Claims 10, 11, 13-18, 33, 35-38, and 40 are pending in the case. Claims 1-9, 19-32, and 39 are withdrawn from consideration. Claims 12 and 34 are cancelled by the applicant.

Response to Arguments

3. Applicant's argument relative rejections under section 103 are moot in view of the new grounds of rejection reflected in the following.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 16 and 38 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one

Art Unit: 2439

skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant's remarks point to original specification at page 13 paragraph [0039] for support of the new feature outlined in claims 16 and 38. However, the cited part does not include any explanation or description related to the feature of: "wherein the user initiation of the execution of the program code includes a user attempt to access a file associated with the program code such that accessing the file initiates execution of the program code."

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 10, 11, 13, 16-18, 33, 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kester (US Patent No. 7,185,015, filed March 14, 2003), hereinafter called Kester, in view of Kottapurath et al. (US Patent No. 6,533,490, filed June 30, 1997), hereinafter called Kot.

Kester teaches detecting the launch of an application on a workstation (col. 4 lines 24-30) by a workstation management module, and determining access privileges of the workstation or the user. This determination is based on the application attributes, one of

Art Unit: 2439

which is the version of the application (a hash, which identifies the application, is generated. One of the identifiers is the version of the application, as shown in col. 4 lines 42-52). The access privileges are determined based on an operating policy (col. 5 lines 25-30), and if the policy does not allow the execution of the identified application, the execution is denied (col. 5 lines 30-39). Kester in view of Kot teaches the limitations of claims detailed as follows:

6.1. As per claim 10, Kester is directed to a method comprising: performing a version inquiry consequent to a user initiation of an execution of a program code (col. 4 lines 23-53. Line 24-29 shows that after the initiation of the execution, access privileges of the user or the workstation is determined. Part of this determination is an inquiry to the version of the initiated application, as shown in line 49-54), the version inquiry includes: determining a current version of the program code (col. 4 lines 48-53, where the version of an application (program code) is determined as a property of the application) satisfying an operating policy (col. 5 lines 25-30, where the policy corresponding to the application is also identified) that is updated for each new version of the program code is made available for installation on a client (the updating of the program code when the new update is made available is taught by combination of Kester and Kot, and particularly teachings of Kot as outlined below); suspending the execution of program code on a client when the client version of the program code on the client is different from the current version of program code satisfying the operating policy (col. 5 lines 33-35, where the execution is denied if the policy does not allow it. Therefore, if the policy

Art Unit: 2439

associated with the version of the launched program does not allow its execution, it won't be executed, and if the policy associated with the version allows execution, it will be executed. Therefore, the program version that is different than the version allowed to be executed, will not be executed.)

Kester teaches determining a client version of program code during launch of the program (col. 4, lines 42-43). Kester also teaches taking an action when the current version of the program does not match the client version based on a policy, but it does not explicitly teach a policy that requires updating the client program with the current version of the program, or determining a client version of program code during launch of the program.

Kot col. 1 lines 38 to 68 teaches determining the version of the client program, comparing it with the current version stored on a server, and when they versions are different, uploading the current version on the client to replace the client version.

Kester and Kot are analogous art as they are both directed to managing applications software running on client devices of a network. At the time of invention, it would have been obvious to the one skilled in art to improve the system of Kester to include a policy that requires software updating once it is determined that the client version is old (not matching the current version) as taught by Kot. The motivation to do so would have

Art Unit: 2439

been to improve software management by assuring that all clients run the current software version.

generating a message for display to a user via the client, the message including an error message (Kester col. 5 lines 47-62 show that when the policy prohibits an action an error message explaining the issue is shown to the user. Therefore, as indicated in the above, the combination of Kester in view of Kot teaches that when the issue is that the software is old, the message will explain to user that the software is old).

Kester in view of Kot (and particularly Kot) teaches initiating a software update once it is determined that the current version is not the latest version, but does not explicitly include many details of the update sequence.

Cheng teaches a software update system for updating various software products (abstract). Based on col. 7 lines 54 to 61, Cheng teaches that a list of updates is determined and displayed to the user for selection.

Chen and Kester in view of Kot are directed to analogous art as they are both directed to software update systems. At the time of invention, it would have been obvious to the one skilled in art to improve Kester in view of Kot by including the details as taught by Cheng, and to include the information related to available updates and display the to the user for selection. The motivation would have been to allow the user to monitor the

Art Unit: 2439

process of software installation, have the flexibility to restore the system to the original state before installation, and provide means to pay for the new updates (see Cheng col. 3 line 40 to col. 5 line 33).

Therefore, Kester in view of Kot and Chen teaches displaying an error message when the software is old and including the list of new available updates.

Kester in view of Kot and Chen also teach a user-selectable link to provide access to updated program code having the current version (Cheng col. 7 line 61 to col. 8 line 43); and updating the program code on the client with updated program code when the user selects the link and accesses the updated program code (Kot col. 1 lines 38 to 68, or Cheng col. 8 lines 43-61).

6.2. As per claim 11, Kester in view of Kot and Cheng is directed to the method of claim 10, further comprising executing the program code on the client when the version of program code on the client corresponds to the version of program code satisfying the operating policy (see response to claim 1, or Kot Fig. 3 and associated text).

6.3. As per claim 13, Kester in view of Kot and Cheng is directed to the method of claim 10, further comprising receiving the operating policy at the client (Kester col. 5 lines 4-9. Note that per Fig. 2, the workstation management module is part of the workstation).

6.4. As per claim 16, Kester in view of Kot and Cheng is directed to the method of claim 10, wherein the user initiation of the execution of the program code includes a user attempt to access a file associated with the program code such that accessing the file initiates execution of the program code (Cheng Fig. 16 and associated text teaches an example where the user access the recovery module, and as a result a program code (reboot sequence) is initiated. Therefore, a user initiates the execution of a reboot includes a user attempt to access the recovery module (a program associated with the reboot), and accessing the recovery program initiates the execution of the reboot program.)

6.5. As per claim 17, Kester in view of Kot and Cheng is directed to the method of claim 10, further comprising notifying a network administrator if the version of program code on the client is different from the version of program code satisfying the operating policy (Kester col. 15, lines 32-60).

6.6. As per claim 18, Kester in view of Kot and Cheng is directed to the method of claim 10, further comprising recording in a log if the version of program code on the client is different from the version of program code satisfying the operating policy (Kester col. 13, lines 4-21).

Art Unit: 2439

6.7. Limitations of claims 33 and 35 are substantially the same as claims 10-13, and 16-18 above.

7. Claims 14-16, 36-38 and 40 rejected under 35 U.S.C. 103(a) as being unpatentable over Kester in view of Kot and Cheng, and further in view of Examiner Official Notice.

7.1. As per claim 14, Kester in view of Kot and Cheng is directed to the method of claim 10, further comprising writing the version of program code on the client to a cache and then reading the cache while the program code is loading (col. 13, lines 4-21 teaches logging that an application is allowed for execution. Examiner takes the official notice that caching to speed up a decision process was well-known in the art. Therefore, Kester's teaching of logging the execution allowed application, and the official notice make caching and reading the cache while program is running to speed up decision making to execute the program obvious.

7.2. As per claim 15, Kester in view of Kot and Cheng is directed to the method of claim 10, wherein updating the program code on the client includes transmitting at least one patch or service pack to the client station (as shown in claim 1, Kester in view of Kot and Cheng teaches updating the client software by downloading the current version of the software. The service pack is a portion of software that updates the downloaded software. Therefore, Kester in view of Kot and Cheng makes it obvious to download a service pack to client software, because it is important to update the software as readily

Art Unit: 2439

shown by Kester in view of Kot and Cheng. In addition, Examiner takes Official Notice that uploading service packs or patches to update a software application was well-known in the art, and therefore obvious to do to the one skilled in art.)

7.3. Limitation of claim 36 are substantially the same as claim 15, with the added limitation that the patch includes information about the patch and an acceptance option for installing the patch. However, patches typically include information about the version of the patch and acceptance option was a well-known feature of patches in the art at the time of invention.

7.4. As per claim 37, Kester in view of Kot and Cheng is direct to the method of claim 15. In addition, when the installation of a software requires rebooting the system, the client is notified that the system needs to be rebooted to make installations in effect. Note that Kot fig. 3 and associated text teaches rebooting the system after the new version of the software is downloaded. Therefore, Kester in view of Kot and Cheng teaches notifying the client prior to installation of the software.

7.5. As per claim 16, Kester in view of Kot and Cheng is direct to the method of claim 10.

In addition accessing a file that initiates execution of a code was well-known in the art at the time of invention. Examples are double clicking on the icons of a program on the desk top view of windows systems (accessing the image (icon) file, which initiates the

Art Unit: 2439

execution of the associated program. Therefore, the feature was well-known in the art and obvious to the one skilled in art to implement.)

7.6 Limitations of claims 38 and 40 are substantially the same as claims 15 above.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Art Unit: 2439

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Farid Homayounmehr whose telephone number is (571) 272-3739. The examiner can be normally reached on 9 hrs Mon-Fri, off Monday biweekly.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Zand can be reached on (571) 272-3811. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Farid Homayounmehr

3/12/2009

/Kambiz Zand/

Supervisory Patent Examiner, Art Unit 2434

Application/Control Number: 10/698,598
Art Unit: 2439

Page 13